

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 492 of 2005

Mahesh Bisht & another

Versus

State & others

Date of decision :- 03-08-05

A.F.R. (Approved for Reporting)

Not approved for reporting

Date :- August 03, 2005.

Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the Judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.492 of 2005

1. Mahesh Bisht S/o Ganga Dutt Bisht
2. Rupesh Bisht S/o Mahesh Bisht
Both R/o 10 Nala Pani Road
P.S. Raipur, Dehradun Applicants
Versus

1. State of Uttaranchal
2. Addl. District & Sessions Judge /
IV F.T.C. Dehradun
3. Judicial Magistrate Ist, Dehradun Respondents

Date:- 3rd August, 2005

Hon'ble J. C. S. Rawat, J.

1. Heard Sri Navneet Kaushik learned counsel for the applicants and learned A.G.A. for the State.

2. The petition under section 482 Cr.P.C. has been filed for quashing the order dated 12.7.2005 passed by the Addl. District & Sessions Judge, Dehradun in S.T. No.210/2004 State Vs. Mahesh Bisht & another under section 308 I.P.C.

3. The factual position in a nutshell is that one-Anurag Bhatia lodged an FIR against the applicants. The matter was investigated and thereafter the chargesheet was filed against applicants under section 325 I.P.C. A note was written by the A.P.O. at the back of the chargesheet that the case falls under section 308 I.P.C. and not under section 325 I.P.C. Thereafter the cognizance was taken by the learned Magistrate under section 325 I.P.C. vide order dated 28.6.2001. The case was committed to the court of Sessions under section 308 I.P.C. Then, the case come up before the session court. The case was allotted a session trial NO.210/2004 and the learned

Magistrate proceeded on to frame the charge against applicants by its order dated 3.12.2004 under section 308 I.P.C. read with 34 I.P.C. Thereafter three witnesses have been examined by the prosecution at that stage and an application was made that the cognizance order was bad in law and chargesheet under section 308 I.P.C. is not made out.

4. The learned counsel for the applicants contended that the committal order is bad in law and as such the entire proceeding is liable to be quashed. It is admitted that the committal order passed under section 308 I.P.C. Thereafter, the learned Sessions Judge also framed the charge under section 308 I.P.C. If the learned Magistrate as well as the learned Sessions Judge was satisfied that there was sufficient ground to frame the charge under section 308 I.P.C. there is no question that the cognizance is bad in law. It is admitted that three witnesses have been examined in this case.

5. It is a well settled that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of framing of charge, the court is to examine the materials only with a view to be satisfied that a prima-facie case of commission of offence alleged has been made out against the accused persons. The High Court under section 482 Cr.P.C. should not interfere with the order of the trial court unless there are strong reasons to hold that in the interest of justice and to avoid abuse of process of the court the charge framed against the accused needs to be quashed. **{Radhey Shyam Vs. Kunj Behari 1989 Supp(2) SCC 572, State of M.P. Vs. S. B. Johari**

2000(2) SCC 57: 2000 SSS(Cri) 311, State of Delhi Vs. Gyan Devi & others 2000 SCC(Cri) 1486}

6. The power of this Court under section 482 Cr.P.C. is very limited. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to this Court to quash the same in exercise of the inherent powers under section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case by the Magistrate to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by this Court. The High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court. **{See State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151}.**

7. It has been held in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that it is settled law that the power to quash a criminal proceeding must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the

FIR or the complaint. The Court also cannot inquire whether the allegations in the complaint are likely to be established or not.

8. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

9. In view of the aforesaid decisions, the petition is devoid of merit. Therefore, the petition is dismissed.

(J. C. S. Rawat, J.)

Dated 03.08.2005

LSR